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Attorneys for Defendants  
Countrywide Home Loans, Inc. (d/b/a  
America's Wholesale Lender), BAC Home  
Loans Servicing, LP (f/k/a Countrywide  
Home Loans Servicing L.P.), ReconTrust  
Co., N.A., Bank of America, N.A., and  
Bank of New York Mellon f/k/a The  
Bank of New York as Trustee

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PETRA MARTINEZ,

Plaintiff,

v.

AMERICA'S WHOLESALE LENDER, *et al.*,

Defendants.

Case No.: 09-cv-05630-WHA

**[PROPOSED] ORDER**

Date: March 4, 2010  
Time: 8:00 a.m.  
Courtroom: 9, 19th Floor  
Judge: Hon. William H. Alsup

1 The January 28, 2010 Motion for Summary Judgment by defendants Countrywide Home  
 2 Loans, Inc. (d/b/a America's Wholesale Lender), BAC Home Loans Servicing, LP (f/k/a  
 3 Countrywide Home Loans Servicing L.P.), ReconTrust Company, N.A., Bank of America, N.A.,  
 4 and Bank of New York Mellon f/k/a The Bank of New York as Trustee ("Defendants") came on  
 5 for hearing before this Court on March 4, 2010.

6 Having considered the papers and arguments of counsel, the Court **GRANTS** Defendants'  
 7 motion for summary judgment, finding that:

- 8 1. Defendants complied with their contractual and statutory obligations under the  
 9 deed of trust and California Civil Code in commencing the foreclosure process;
- 10 2. Defendants did not need to possess the original promissory note before  
 11 commencing the foreclosure process because California law does not recognize  
 12 any such rule, and in any event, Defendants had physical possession of the note at  
 13 the time they commenced the foreclosure process;
- 14 3. Plaintiff Petra Martinez ("Plaintiff") lacks standing to pursue any of her claims as  
 15 a matter of law because she has failed to comply with California's "tender rule";
- 16 4. Plaintiff cannot state a claim based on Defendants' alleged failures to comply with  
 17 procedural requirements in commencing the foreclosure process in any event  
 because she has failed to show that she suffered prejudice as a result of the  
 purported irregularities; and
- 18 5. Plaintiff has failed to plead facts sufficient to state a claim under Rules 8 and 9(b)  
 19 of the Federal Rules of Civil Procedure.

20 **IT IS ORDERED** that Defendants' motion for summary judgment is **GRANTED**, and  
 21 that judgment shall be, and hereby is, entered in favor of Defendants and against Plaintiff as to  
 22 each and all of Plaintiff's causes of action.

23 DATED: \_\_\_\_\_

24 THE HONORABLE WILLIAM H. ALSUP  
 25 UNITED STATES DISTRICT JUDGE  
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